

**Definition of “Outside Salesman”
(29 CFR 541.500)**

The term *employee employed *** in the capacity of outside salesman* in section 13(a)(1) of the Act shall mean any employee:

- (a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer’s place or places of business in:
 - (1) Making sales within the meaning of section 3(k) of the Act, or
 - (2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- (b) Whose hours of work of a nature other than that described in paragraph (a)(1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer: *Provided*, That work performed incidental to and in conjunction with the employee’s own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

**Making Sales or Obtaining Orders
(29 CFR 541.501)**

- (a) Section 541.5 requires that the employee be engaged in: (1) Making sales within the meaning of section 3(k) of the Act, or (2) obtaining orders or contracts for services or for the use of facilities.
- (b) Generally speaking, the divisions have interpreted section 3(k) of the Act to include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Thus sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of section 3(k). (Section 3(k) of the Act states that “sale” or “sell” includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.)
- (c) It will be noted that the exempt work includes not only the sales of commodities, but also “obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.” “Obtaining orders of * * * for the use of facilities” includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.
- (d) The word “services” extends the exemption as outside salesmen to employees who sell or take orders for a service, which is performed for the

customer by someone other than the person taking the order. For example, it includes the salesman of a typewriter repair service who does not himself do the repairing. It also includes otherwise exempt outside salesmen who obtain orders for the laundering of the customer's own linens as well as those who obtain orders for the rental of the laundry's linens.

- (e) The inclusion of the word "services" is not intended to exempt persons who, in a very loose sense, are sometimes described as selling "services". For example, it does not include persons such as servicemen even though they may sell the service which they themselves perform. Selling the service in such cases would be incidental to the servicing rather than the reverse. Nor does it include outside buyers, who in a very loose sense are sometimes described as selling their employer's "service" to the person from whom they obtain their goods. It is obvious that the relationship here is the reverse of that of salesman-customer.

Away From His employer's Place of Business (29 CFR 541.502)

- (a) Section 541.5 requires that an outside salesman be customarily and regularly engage "away from his employer's place or place of business". This requirement is based on the obvious connotation of the word "outside" in the term "outside salesman". It would obviously lie beyond the scope of the Administrator's authority that "outside salesman" should be construed to include inside salesman. Inside sales and other inside work (except such as is directly in conjunction with and incidental to outside sales and solicitations, as explained in paragraph (b) of this section) is nonexempt.
- (b) Characteristically the outside salesman is one who makes his sales at his customer's place of business. This is the reverse of sales made by mail or telephone (except where the telephone is used merely as an adjunct to personal calls). Thus any fixed site, whether home or office, used by a salesman as a headquarters or for telephonic solicitation of sales must be construed as one of his employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. It should not be inferred from the foregoing that an outside salesman loses his exemption by displaying his samples in hotel sample rooms as he travels from city to city; these sample rooms should not be considered as his employer's places of business.

You can obtain more information regarding this exemption from the following websites with the US Department of Labor:

29 CFR 541.503 – Incidental to and in conjunction with sales work
http://www.dol.gov/dol/allcfr/Title_29/Part_541/29CFR541.503.htm

29 CFR 541.505 – Driver salesmen
http://www.dol.gov/dol/allcfr/Title_29/Part_541/29CFR541.505.htm

29 CFR 541.506 – Nonexempt work generally
http://www.dol.gov/dol/allcfr/Title_29/Part_541/29CFR541.506.htm

29 CFR 541.504 - Promotion work
http://www.dol.gov/dol/allcfr/Title_29/Part_541/29CFR541.504.htm

29 CFR 541.507 – 20-percent limitation on nonexempt work
http://www.dol.gov/dol/allcfr/Title_29/Part_541/29CFR541.507.htm

29 CFR 541.508 – Trainees, outside salesmen
http://www.dol.gov/dol/allcfr/Title_29/Part_541/29CFR541.508.htm